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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,590	08/25/2003	Ricky W. Purcell	1443.053US1	4252

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EXAMINER

ROANE, AARON F

ART UNIT PAPER NUMBER

3739

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

7P

<b>Office Action Summary</b>	Application No. 10/648,590	Applicant(s) PURCELL ET AL.	
	Examiner Aaron Roane	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-16, 20, 21, 24-27 and 29-39 is/are pending in the application.  
     4a) Of the above claim(s) 20, 21, 24-27 and 37-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-16 and 29-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date 8/25/03, 3/7/05.
- 4) ☒ Interview Summary (PTO-413)  
     Paper No(s)/Mail Date 200503291.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 6-16 and 29-36, drawn to a cold pack, classified in class 607, subclass 114.
- II. Claims 20, 21, 24-27 and 37-39, drawn to a method of cooling a body portion, classified in class 607, subclass 108.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the cold pack can be used to cool something else other than a body portion such as a drink.

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During a telephone conversation with Andrew R. Peret (Reg. No. 41,246) on 3/28/2005 a provisional election was made without traverse to prosecute the invention of I, claims 6-16 and 29-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20, 21, 24-27 and 37-39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-12, 14-16, 29, 30, 33 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Helming (USPN 6,248,125 B1).

Regarding claims 6, 9, 10, 12, 14 and 15, Helming discloses a cold pack (10) comprising an enclosure (16), a solute (30) within said enclosure; a liquid (34) within said enclosure; a membrane (36 of 22) segregating said liquid from said solute, wherein rupturing said membrane mixes said liquid with said solute to produce an endothermic solution within said enclosure, and an absorbent core (14) within said enclosure, said absorbent core retaining said endothermic solution to spread said endothermic solution throughout said enclosure. Additionally, Helming discloses wherein rupturing said membrane causes said endothermic solution to be retained by said absorbent core. Finally, Helming further discloses that the membrane (36) segregates the liquid from the absorbent core, see col. 1-6 and figures 1-6.

Regarding claim 7, Helming discloses the claimed invention, see figure

Regarding claims 8 and 33, Helming further discloses that the absorbent core (14) is an absorbent layer, see col. 1-6 and figure 1.

Regarding claim 11, Helming further discloses the membrane is polyethylene (36 of 22), see col. 3, lines 11-29.

Regarding claim 16, Helming discloses a cold pack capable of performing the function wherein substantially all of said powdered solute is dissolved in said liquid to form said endothermic solution before said endothermic solution is retained by said absorbent core.

Regarding claims 29 and 36, Helming further discloses the liquid is water, see col. 3, lines 31-35.

Regarding claim 30, Helming further discloses the solute is ammonium nitrate, see col. 3, lines 39-51.

Claims 6, 8, 12, 13, 32, 33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Sabin (USPN 6,099,555).

Regarding claims 6, 8, 12, 32, 33 and 35, Sabin discloses a cold pack (1) comprising: an enclosure (entire outer covering consisting of 2 and 2a), a powdered solute (24) within said enclosure; a liquid (28) within said enclosure, a membrane (portion of 2 and 2a located at 7) segregating said liquid from said powdered solute, wherein rupturing said membrane mixes said liquid with said powdered solute to produce an endothermic solution within said enclosure, and an absorbent core (26 of 8) within said enclosure, said absorbent core retaining said endothermic solution to spread said endothermic solution throughout said enclosure. Sabin further discloses that the absorbent core (26 of 8) is an absorbent layer. Finally, Sabin discloses solute is interspersed throughout said absorbent layer before said membrane is ruptured, see col. 1-11 and figures 2 and 3.

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Regarding claim 13, Sabin further discloses the powdered solute is substantially between 0.001 and 0.025 inches, see col. 1-11 and figures 2 and 3.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helming (USPN 6,248,125 B1).

Regarding claims 31 and 34, Helming discloses the claimed invention except for explicitly reciting the absorbent layer is pulp fiber. At the time of the invention, it would have been an obvious matter of design choice to one of ordinary skill in the art to use an absorbent layer made of anything other than pulp fiber because Applicant has not disclosed a pulp fiber absorbent layer provides an advantage, is used for a particular purpose, or solves a stated problem over a non pulp fiber absorbent layer. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to

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perform equally well with a pulp fiber absorbent layer because it provides the necessary absorbent qualities.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R.   
March 29, 2005

  
**ROSILAND K. ROLLINS**  
PRIMARY EXAMINER